

Gender Inequity Throughout the Legal Academy: A Quick Look at the (Surprisingly Limited) Data

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The long-standing overrepresentation of female law faculty in skills teaching and service-oriented positions is well documented.¹ In contrast, the historical underrepresentation of female law faculty in top dean and tenured or tenure-track teaching positions has been widely recognized but difficult to quantify. The American Bar Association has a link in the statistics archives of its website to a chart from Fall 2013 on the gender, ethnicity, and status of law faculty.² The Association of American Law Schools (AALS) links to the same chart on its website.³ This chart replaced a similar chart covering 2008 to 2009 that the ABA has since removed from its website and is no longer available. To my knowledge, this is the extent of the data on gender, ethnicity, and status of law faculty provided by either organization. Although the ABA and the AALS, in turn, publish faculty data reported to the ABA by individual law schools, the data breakdown by gender and ethnicity distinguishes only between full and

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1. See, e.g., ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 69 (2015), [https://www.alwd.org/images/resources/2015%20Survey%20Report%20\(AY%202014-2015\).pdf](https://www.alwd.org/images/resources/2015%20Survey%20Report%20(AY%202014-2015).pdf) (indicating that as of 2015 women comprised 72 percent of full-time legal research and writing faculty); ROBERT R. KUEHN, MARGARET REUTER & DAVID A. SANTACROCE, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., 2019-20 SURVEY OF APPLIED LEGAL EDUCATION 39 (2020), [HTTPS://UPLOADS-SSL.WEBFLOW.COM/5D8CDE48C96867B8EA8C6720/5F5BCF9641910F246B95EAD9_REPORT%20ON%202019-20%20CSALE%20SURVEY.PDF](https://uploads-ssl.webflow.com/5D8CDE48C96867B8EA8C6720/5F5BCF9641910F246B95EAD9_REPORT%20ON%202019-20%20CSALE%20SURVEY.PDF). (indicating that as of 2020 women comprise 67 percent of full-time clinical faculty).
2. SECTION OF LEG. EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, DATA FROM THE 2013 ANNUAL QUESTIONNAIRE, LAW SCHOOL FACULTY AND STAFF BY ETHNICITY AND GENDER (2013) [hereinafter 2013 ABA DATA], http://www.americanbar.org/groups/legal_education/resources/statistics.html (indicating that in 2013, 2497 out of 6907 full-time, tenured or tenure-track faculty were women). The chart does not indicate whether legal writing faculty with tenure, on the tenure track, or with 405(c) status were included in the category of "Full Time Teaching Resources" or define the faculty considered "Full Time Skills" or "Full Time Writing" under the "Other Teaching Resources" category.
3. AM. ASS'N OF LAW SCH., *Data Resources: Legal Education Statistics*, <https://www.aals.org/data-resources/> (last visited Oct. 27, 2020).

part-time faculty and does not indicate title or security of position.⁴ As part of its annual questionnaire, the ABA collects this information from law schools but does not release it.⁵ Ongoing access to historical and current information is critical in raising awareness about and making progress on gender equity issues.

I. Gender Distribution Among Deans, Faculty, and Librarians

Based on available data, the charts below demonstrate that in the case of both dean and faculty positions, as the status (and most certainly salary) of the position decreases, the percentage of women increases. In her remarks at the 2019 AALS Annual Meeting discussion group on gender inequality in the legal academy, Dean Susan Duncan indicated that in 2019, 35 percent of law school deans were female,⁶ a six percent increase from 2013.⁷ In 2013, the percentage of full-time, tenured or tenure-track female faculty had increased from 28 percent in 2009 to 36 percent.⁸ The most current data from the Center for the Study of Applied Legal Education and the annual surveys of legal writing faculty indicate that the percentage of women in clinical teaching positions has increased from 60 percent in 2010 to 67 percent in 2019,⁹ whereas the percentage of legal writing faculty has remained roughly the same since

4. See, e.g., AM. ASS'N OF LAW SCH., LEGAL EDUCATION AT A GLANCE: 2019, <https://www.aals.org/wp-content/uploads/2020/02/2019-Legal-Education-At-a-Glance.pdf>; SECTION OF LEG. EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, STANDARD 509 INFORMATION REPORTS, <http://www.abarequireddisclosures.org/Disclosure509.aspx>.
5. See AM. BAR ASS'N, ANNUAL QUESTIONNAIRE, PART V: FACULTY INSTRUCTIONS AND QUESTIONS, [HTTPS://WWW.AMERICANBAR.ORG/GROUPS/LEGAL_EDUCATION/RESOURCES/QUESTIONNAIRE/](https://www.americanbar.org/groups/legal_education/resources/questionnaire/) (last visited Oct. 27, 2020).
6. See Susan Hanley Duncan, *Reducing Gender Inequity in the Academy and the Legal Profession*, 69 J. LEGAL EDUC. 95, 95 (2019).
7. See 2013 ABA DATA, *supra* note 2 (indicating that 29 percent of deans in 2013 were female); see also Figure 1 in this article.
8. See Kristen K. Tiscione & Amy Vorenberg, *Podia and Pens: Dismantling the Two-Track System for Legal Research and Writing Faculty*, 31 COLUM. J. GENDER & L. 47, 49 n.5 (2015) (citing ASS'N OF AM. LAW SCH., 2008-2009 AALS STATISTICAL REPORT ON LAW FACULTY)). As of 2019, the AALS reported that 39.9 percent of all law faculty are female, but that figure includes full and part-time faculty. See AM. ASS'N OF LAW SCH., LEGAL EDUCATION AT A GLANCE: 2019, *supra* note 4.
9. ROBERT R. KUEHN, MARGARET REUTER & DAVID A. SANTACROCE, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., 2019-20 Survey of Applied Legal Education 39 (2020), [HTTPS://UPLOADS-SSL.WEBFLOW.COM/5D8CDE48C96867B8EA8C6720/5F5BCF9641910F246B95EAD9-REPORT%20ON%202019-20%20CSALE%20SURVEY.PDF](https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5f5bcf9641910f246b95ead9-report%20on%202019-20%20CSALE%20survey.pdf).

2000.¹⁰ In 2013, 65 percent of full-time law librarians were female;¹¹ today, roughly 70 percent of librarians are female.¹²

Deans

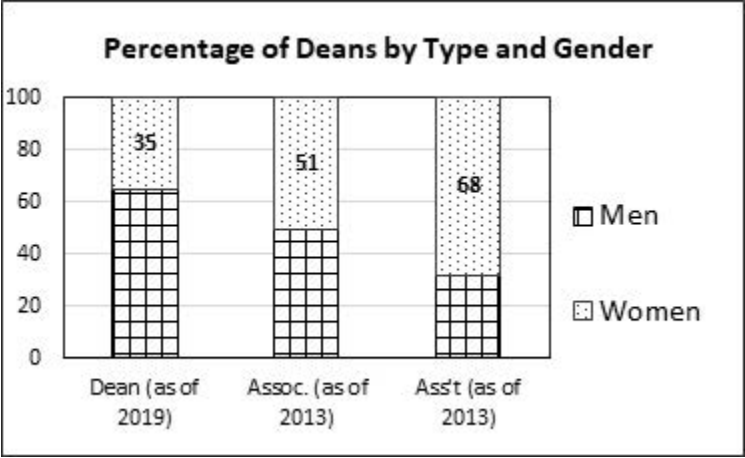


Figure 1

10. ASS'N OF LEGAL WRITING DIRS., REPORT OF THE ANNUAL LEGAL WRITING SURVEY, tbls. 57 & 71(b), <https://www.alwd.org/resources/survey> (comparing annual reports from 2000 to 2015). See also Figure 2 in this article.

11. See 2013 ABA DATA, *supra* note 2.

12. Jamie J. Baker, *The Intersectionality of Law Librarianship & Gender*, 65 VILLANOVA L. REV. (forthcoming 2020). See also Figure 3 in this article.

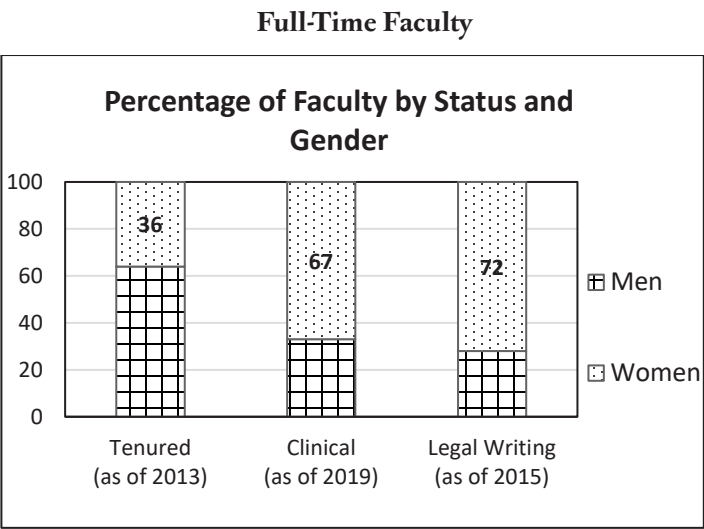


Figure 2

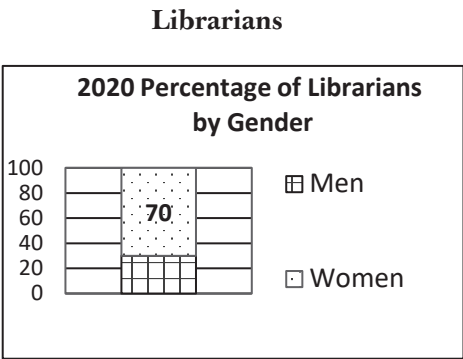


Figure 3

II. Salary Disparities by Gender and Status

The pay gap for female law faculty is even harder to ascertain. The Institute for Women’s Policy Research reports that the ratio of women’s to men’s earnings in the United States is 81.7 percent.¹³ At the current rate of change, this 19.5 percent wage gap for women overall is not expected to close until

13. INSTITUTE FOR WOMEN’S POLICY RESEARCH, THE GENDER WAGE GAP 2018: EARNINGS DIFFERENCES BY GENDER, RACE, AND ETHNICITY I (Sept. 2019), <https://iwpr.org/wp-content/uploads/2020/08/C484.pdf>.

2059.¹⁴ The gap for black and Hispanic women is not likely to close until 2119 and 2224, respectively.¹⁵

A related study indicates that in “professional and related occupations,” the gap is wider.¹⁶ White women earn roughly 74 percent of white men, whereas black women earn 62 percent.¹⁷ Although the Society of American Law Teachers (SALT) conducts an annual salary survey, fewer than half of all ABA-accredited law schools respond to it.¹⁸ According to the 2018 SALT survey, the national average salary for tenured law faculty is roughly \$147,000,¹⁹ but the survey does not request data by gender. The gap likely varies widely across schools. In the employment discrimination case brought against the University of Denver,²⁰ the plaintiffs alleged that as of October 2013, the mean salary for female faculty was nearly \$20,000 less than that of their male colleagues.²¹

Male and female faculty providing skills instruction earn significantly less. According to the Institute for Women’s Policy Research, “occupational segregation is a major contributor to the gender wage gap.”²² As the following data show, there is a “clear penalty for working in female-dominated occupations,”²³ with tenured and nontenured legal writing faculty (and presumably clinicians and librarians)²⁴ earning significantly less than doctrinally focused faculty. The 2017-2018 ALWD/LWI Survey indicates that the average salary for legal writing faculty was \$95,617 for faculty with traditional or programmatic tenure, \$73,667 for faculty with 405(c) status, \$72,350 for faculty with long-term contracts, and \$69,083 for faculty with

14. *Id.* at 2.

15. *Id.*

16. INSTITUTE FOR WOMEN’S POLICY RESEARCH, *THE GENDER WAGE GAP BY OCCUPATION 2017 AND BY RACE AND ETHNICITY* 7 (Apr. 2018), https://iwpr.org/wp-content/uploads/2020/08/C467_2018-Occupational-Wage-Gap.pdf.

17. *Id.*

18. Only eighty-one schools are represented in the 2018 survey. SOC’Y OF AM. L. TCHRS., *SALT EQUALIZER* 1 (2018), <https://www.saltlaw.org/wp-content/uploads/2018/11/SALT-salary-survey-2018-final.pdf>.

19. *See id.* (adding the average salary of tenured faculty members at all reporting schools and dividing by eighty-one).

20. John Herrick, *Seven Female Law Professors Win \$2.6 million Settlement From DU in Unequal Pay Lawsuit*, THE COLO. INDEP. (May 17, 2018), <https://www.coloradoindependent.com/2018/05/17/du-equal-pay-lawsuit-gender-discrimination/>.

21. *Id.*

22. ARIANE HEGEWISCH & HEIDI HARTMANN, INST. FOR WOMEN’S POL’Y RESEARCH, *OCCUPATIONAL SEGREGATION AND THE GENDER WAGE GAP: A JOB HALF DONE II* (2014), <https://iwpr.org/wp-content/uploads/2020/08/C419.pdf>.

23. *Id.* at 13.

24. Salary data for clinical faculty and librarians are not publicly available.

short-term contracts.²⁵ As the chart below indicates, at best, on average, the ratio of legal writing faculty to traditional tenured faculty earnings is likely 65 percent ($\$95,617 \div \$147,000$). At worst, the ratio of earnings could be as low as 47 percent ($\$69,083 \div \$147,000$).²⁶ Given the ability of private law schools to keep salary information confidential, we can be sure that the disparities are even greater.²⁷

**Legal Writing Faculty Salary Compared to
Traditional Tenured Faculty Salary as of 2018**

Legal Writing Faculty by Security of Position	Percentage of Salary
Tenured legal writing faculty	65
Legal writing faculty with 405(c) status or on 405(c) track	50
Legal writing faculty on long-term contracts	49
Legal writing faculty on short-term contracts	47

To achieve gender equality in the legal academy, national organizations such as the American Bar Association's Section on Legal Education and Admissions to the Bar and the Association of American Law Schools need to compile and publish annual data on law faculty. With sole and ready access to this information, their failure to make it publicly available is a significant barrier to progress.

Within the academy, female faculty, particularly those with security of position, need to demand access to salary information and transparency in law school compensation policies. Where they suspect gender disparities with respect to salary, benefits, leadership opportunities, and recognition, they must

25. See ASS'N OF LEGAL WRITING DIRS., REPORT OF THE ANNUAL LEGAL WRITING SURVEY, tbl. Q.12.3, at 138 (2018), <https://www.alwd.org/images/resources/ALWD-LWI-2017-18-Institutional-Survey-Report.pdf>.

26. Because starting salaries for skills-focused faculty are often significantly lower than those for entry-level tenure-track faculty, it is not possible to narrow the gap through annual merit raises.

27. There is reason to suspect that women in these positions earn less than their male counterparts as well. See, e.g., ASS'N OF LEGAL WRITING DIRS., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 98-99 (2014) (indicating a pay gap ranging from 14 to 23 percent for legal writing directors).

urge their schools to conduct gender and ethnicity equity studies. Finally, as Dean Dickerson explains in her essay,²⁸ in accepting positions and negotiating salaries, female faculty must learn to find the Goldilocks Zone, pressing for adequate compensation, as well as for their own advancement, while at the same time meeting their employer's needs.

28. Darby Dickerson, *Finding the Goldilocks Zone: Negotiating Your First Employment Offer in Legal Academia*, 69 J. LEGAL EDUC. 48 (2019).